

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DON ASCARE,)	
)	
Plaintiff,)	
)	
v.)	No. 4:10CV1979(JCH)
)	
MASTERCARD INTERNATIONAL, INC.,)	
)	
Defendant.)	

**PLAINTIFF DON ASCARE'S MOTION FOR EQUITABLE RELIEF
AND PREJUDGMENT INTEREST**

COMES NOW Plaintiff Don Ascare, by and through counsel, and pursuant to Fed.R.Civ.P. 59(e), hereby moves the Court to amend the judgment entered by the Court on October 3, 2012 (ECF No. 186), by awarding Plaintiff equitable relief and prejudgment interest. As grounds therefor, Plaintiff states as follows:

1. On October 2, 2012, a jury returned a verdict in favor of Plaintiff on his claim of wrongful discharge in violation of public policy based upon Plaintiff's whistleblowing activities, against Defendant MasterCard International, Inc., d/b/a/ MasterCard Worldwide. The jury found that "Plaintiff Don Ascare reporting to his superiors what he believed to be a failure properly to classify alleged leased employees by MasterCard was a contributing factor to Plaintiff Don Ascare's discharge." As part of his damages, the jury awarded Plaintiff the amount of \$210,000.00. The Court entered judgment pursuant to the jury's verdict on October 3, 2012.

2. The Court should award equitable relief in the form of reinstatement or front pay.

3. Reinstatement is impracticable and inappropriate in this case due to the high levels of hostility exhibited by Defendant toward Plaintiff. Throughout the trial of this matter, Defendant vilified and assassinated the character of Plaintiff. The relationship between Plaintiff and his former employer has been irreparably damaged.

4. Reinstatement at MasterCard would require Plaintiff to report to the same two supervisors that his whistleblowing activities related to, ultimately resulting in his wrongful discharge.

5. Further, reinstatement would require the displacement of a non-culpable employee, Plaintiff's replacement, who has now served in the position for approximately the past two and one half (2½) years.

6. Therefore, for the above-stated reasons, reinstatement is not a viable remedy and Plaintiff requests that the Court order Defendant to pay Plaintiff front pay in lieu of reinstatement.

7. Plaintiff requests that the Court schedule a hearing to address the front pay in order to determine the amount of front pay to be awarded in this case.

8. In support of this Motion, Plaintiff intends to rely upon the evidence of record in this case from the trial of Plaintiff's claims as well as the reports and/or testimony of the following post-trial expert witnesses in support of the front pay issues:

- a. Tim D. Kaver, V.P., C.R.C.
Director of Job Placements
England & Company
12430 Tesson Ferry Road
St. Louis, MO 63128

- b. Karen Grossman Tabak, Ph.D., CPA
12608 Royal Manor Drive
St. Louis, MO 63141

9. Plaintiff further requests that the Court order Defendants to pay Plaintiff prejudgment interest in the amount of \$16,080.82 on the amount of damages awarded by the jury for Plaintiff's lost wages and benefits in the amount of \$210,000.00.¹

10. Plaintiff also requests that the Court amend the judgment to order that post-judgment interest shall accrue upon all sums due pursuant to the judgment at the rate of 5.25%, pursuant to Mo. Rev. Stat § 408.040.2.

WHEREFORE Plaintiff Don Ascare respectfully moves the Court to amend the judgment entered by the Court on October 3, 2012, by awarding Plaintiff front pay in an amount to be determined after hearing, prejudgment interest, post-judgment interest and such other and further relief as the Court deems just and proper in the circumstances.

¹ This amount is arrived at by calculating simple interest upon the sum of \$210,000.00 at the rate of 3.25% (per Mo. Rev Stat. § 408.040.3) for the period from May 27, 2010 to October 3, 2012. The basis of the calculation is further explained in the accompanying legal memorandum in support of this Motion.

**CAPES, SOKOL, GOODMAN &
SARACHAN, P.C.**

By: /s/ S. Todd Hamby
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of October, 2012, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system, upon:

Robert W. Stewart, Esq.
Whitney D. Pile, Esq.
The Lowenbaum Partnership LLC
222 S. Central Ave., Suite 901
St. Louis, Missouri 63105

 /s/ S. Todd Hamby